



EUROPEAN COMMISSION

Brussels, 15.2.2017

C(2017)803 final

**Subject: State aid / Germany**  
**SA.45645 (2016/N)**  
**Saxony-Anhalt: Guidelines for support for nature conservation and landscape maintenance projects (Nature Conservation Guidelines)**

Sir,

The European Commission ("the Commission") wishes to inform Germany that, having examined the information supplied by your authorities on the notified measure referred to above, it has decided that this scheme does not constitute State aid in the sense of Article 107(1) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

#### **1. PROCEDURE**

- (1) By letter of 14 June 2016, registered by the Commission on the same day, Germany notified, according to Article 108(3) TFEU, the above mentioned scheme.
- (2) The Commission sent requests for additional information to the German authorities on 20 July 2016, 7 September 2016, 17 October 2016 and 22 December 2016, which the German authorities answered by letters of 1 August 2016, 28 September 2016, 8 November 2016 and 16 January 2017, respectively.

Seiner Exzellenz Herrn Sigmar Gabriel  
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## **2. DESCRIPTION**

### **2.1. Title**

- (3) Saxony-Anhalt: Guidelines for support for nature conservation and landscape maintenance projects (Nature Conservation Guidelines)

### **2.2. Objective**

- (4) With the present notification the authorities of Germany wish to introduce a scheme for development of nature and landscape as referred to in sections 8.2.3.3.1 and 8.2.3.3.8 of the Rural Development Programme for Saxony-Anhalt 2014-2020 (sub-measures 7.1 and 7.6), further described in section 2.8 of this decision.
- (5) The objective of the notified scheme is to support basic services in rural areas concerning nature conservation and landscape maintenance. In particular, the scheme aims at:
- (a) conservation of natural, semi-natural and man-made habitats and species occurring in them for the purposes of preservation of biodiversity;
  - (b) implementation of the requirements of national and international agreements on biodiversity and of Natura 2000;
  - (c) contribution to environmental education and information of the general public on the protection of biodiversity.
- (6) The impact on the environment has already been analysed in the approved Rural Development Programme for Saxony-Anhalt 2014-2020. The objective of the scheme is maintenance and restoration of natural and cultural landscapes and is thus expected to have positive effects on the environment.

### **2.3. Legal basis**

- (7) The legal basis are guidelines of the Ministry of Agriculture and Environment of Saxony-Anhalt [*Richtlinien zur Förderung von Naturschutz- und Landschaftspflegeprojekten (Naturschutzrichtlinien) des Ministeriums für Landwirtschaft und Umwelt des Landes Sachsen-Anhalt*]

### **2.4. Duration**

- (8) From the date of the Commission decision till 31 December 2023.

### **2.5. Budget**

- (9) Overall budget is EUR 46.7 million co-financed from Union and national funds.
- (10) The aid will be co-financed at 75% by the EAFRD and at 25% by Land Saxony-Anhalt.

### **2.6. Beneficiaries**

- (11) The number of beneficiaries is estimated to be between 11 and 50.

- (12) Beneficiaries can be:
- (a) non-profit private-law legal entities, in particular associations and non-profit foundations;
  - (b) public bodies;
  - (c) the State Office for Environmental Protection (*Landesamt für Umweltschutz*, LAU),
  - (d) Harz (Saxony-Anhalt) National Park, Middle Elbe Biosphere Reserve, Karstlandschaft Südharz Biosphere Reserve, Drömling Nature Reserve,
  - (e) Saxony-Anhalt Forestry Department (*Landesforstbetrieb Sachsen-Anhalt*, LFB),
  - (f) the State Forestry Centre (*Landeszentrum Wald*, LZWald).
- (13) Excluded from the scheme are:
- (a) undertakings in difficulty in the meaning of point 26 of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020<sup>1</sup> ("the Guidelines");
  - (b) undertakings subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market.

## **2.7. Aid instrument**

- (14) Direct grant.

## **2.8. Description of the aid measure**

- (15) The scheme, described in sections 8.2.3.3.1 and 8.2.3.3.8 of the Rural Development Programme for Saxony-Anhalt 2014-2020 is as follows:
- (16) Supported projects relate to:
- (a) protection of biodiversity,
  - (b) implementation of the Natura 2000 network,
  - (c) installation of the biotope network,
  - (d) conservation and development of the cultural landscape,
  - (e) raising awareness of environmental protection and
  - (f) conservation and development of the natural heritage.

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<sup>1</sup> OJ C 204, 1.7.2014, p. 1, amended in the Commission Notice amending the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (2015/C 390/05), OJ C 390, 24.11.2015, p.4.

- (17) Support may be provided in particular to cover:
- (a) Projects for drawing up and updating protection and management plans relating to Natura 2000 sites and other sites of high nature conservation value, such as:
    - documentation concerning the conservation status of areas to be protected,
    - development of a uniform assessment standard as a basis for conservation, management and monitoring systems,
    - management and maintenance systems for the permanent safeguarding of objects of conservation,
    - creation and development of conditions for maintaining an endangered-species monitoring system, fulfilling reporting obligations, examining, managing and documenting the conservation status of countryside and landscape, and environmental observation including the establishment of permanent observation sites for monitoring medium to long-term developments,
    - maintenance and development schemes for large conservation areas.
  - (b) Projects for species conservation and management at Natura 2000 sites and other sites of high nature conservation value, including:
    - all developments and actions required for species management or closely connected with it,
    - projects for practical application of the monitoring system for ensuring reproduction and safeguarding population stabilisation and increase, including projects for identifying nesting and brooding sites.
  - (c) Measures for maintaining Natura 2000 sites and sites of high nature conservation value for the purpose of conserving and improving the rural heritage.
  - (d) Environmental awareness-raising projects relating to biodiversity, sites of high nature-conservation value or the Natura 2000 network and including:
    - the preparation and publication of information material on protecting biodiversity,
    - the preparation of information material that is directly relevant to local subjects of conservation,
    - projects for informing or teaching the public in the form of seminars, technical meetings, public events and exhibitions,

- visitor guidance and visitor information (e.g., information tables, nature trails, observation facilities and renovated, extended or newly installed information centres),
  - support for and promotion of projects for schools and further education establishments designed to communicate the objectives of nature conservation and, in particular, of the system of Natura 2000 conservation sites,
  - the setting-up of simple field stations for the purpose of teaching about and providing information on endangered species and types of habitat.
- (e) Studies and investments, such as those listed below, in connection with the maintenance, restoration and improvement of the natural heritage of Natura 2000 sites and sites with high nature conservation value:
- conservation and restoration of natural habitats,
  - stabilisation and development of populations of endangered species,
  - restoration, development and creation of habitats for native species of plants and animals and of habitat types,
  - conservation and development of conservation sites and subjects of conservation,
  - restoration of habitats in the areas in which they naturally occur,
  - implementation and development of an operational biotope network.
- (18) Eligible expenditure includes, in particular, expenditure on establishing and updating conservation and management plans, investments (including planning services), study expenses, staff costs, administrative expenditure, other operating expenditure, costs of educational, advisory and information-providing services, training expenditure, public relations expenditure, capital expenditure and network expenditure arising from the implementation of the project.
- (19) As regards investments, the following expenditure is eligible:
- (a) the construction, acquisition or improvement of immovable property (land purchase not being eligible);
  - (b) the purchase or lease purchase of machinery and equipment up to the market value of the asset;
  - (c) the general costs linked to expenditure referred to in points (a) and (b) above, such as architect, engineer and consultation fees, fees relating to advice on environmental and economic sustainability, including feasibility studies; feasibility studies remain eligible expenditure even where, based on their results, no expenditure under points (a) and (b) above is incurred.

- (20) Aid intensities:
- (a) 100% of eligible expenditure in the case of projects concerned with the prevention of deterioration, compliance with requirements and, if appropriate, restoration in accordance with the Birds Directive<sup>2</sup> or the Habitats Directive<sup>3</sup>;
  - (b) 100% of eligible expenditure in the case of projects relating to the implementation of Saxony-Anhalt's biodiversity strategy by the LAU, Harz (Saxony-Anhalt) National Park, Middle Elbe and Karstlandschaft Südharz Biosphere Reserves, Drömling Nature Reserve and the Environmental, Nature Conservation and Climate Protection Foundation;
  - (c) 100% of eligible expenditure for developing and maintaining conservation and development schemes in nature reserves;
  - (d) 80% of eligible expenditure for other projects; in the case of pilot schemes, the level of support may be increased to 90%.
- (21) Supported projects must be implemented in accordance with the objectives and principles of the nature conservation and landscape maintenance. In this context, the relevant projects are to be implemented in accordance with plans for the development of municipalities and villages in rural areas and their basic services, where such plans exist and must be consistent with any relevant local development strategy.
- (22) The areas covered by the aid are the Natura 2000 protected sites and other areas of high natural value in the rural areas in Saxony-Anhalt.
- (23) The German authorities confirmed, with regard to studies and investments associated with the maintenance, restoration and upgrading of the natural heritage and high nature value sites, as well as environmental awareness actions, that the relevant eligible landscapes and sites of high nature values are formally recognised as natural heritage.
- (24) The German authorities explained that projects supported under the present scheme will not generate net revenues. It is stipulated in the grant decisions that items acquired when implementing the notified measure may only be used in accordance with the aid objective and only for non-economic nature protection purposes. In particular renting, leasing or any other transfer for use against payment is not allowed.
- (25) According to the German authorities, no economic activities take place and no goods or services are offered on a market within the supported projects. The projects within the notified scheme are not aimed at commercial exploitation. All activities (brochures, guides, trainings, meetings etc. are offered) must in principle be accessible free of charge. Only in exceptional cases (for example, for certain expensive material for promotion and education developed and produced

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<sup>2</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7.

<sup>3</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7.

within a project, e.g. expensive brochures, films and the like) a nominal fee ("Schutzgebühr") is required, which never cover the costs actually incurred and which must be completely accounted for in the project. The imposition of a nominal fee is intended to ensure that such material is used properly and in the longer term. The results of the projects under the notified scheme are fully used for the public good and will be available to the public. Any payment-based use of supported projects' elements is excluded. The granting authority (and hence the Land Sachsen-Anhalt) secures, through a relevant ancillary provision in the grant decision, their right of use of the results of the project and of the copyright protected parts of project results.

- (26) The German authorities further explained that, outside of the supported projects, it is not excluded that some of the beneficiaries of the notified scheme offer goods or services on a market and thus carry out economic activities. In this regard, the German authorities assured that it is ensured in different ways that no financial flow takes place between the supported non-economic activities on the one hand and economic activities of the beneficiaries on the other hand:
- (a) the objective of the aid is stipulated in detail in the aid application and in the granting decision;
  - (b) the financing of the project is governed by mandatory costs and a financial plan, so that the correct use of subsidies is ensured already before the start of the project;
  - (c) payments are made by way of a reimbursement procedure, i.e. prior to the disbursement of funding all invoices are checked, the beneficiary must pay in advance and an inspection also takes place in order to check whether the invoices submitted fit to the supported project, with the aim to ensure that subsidies cannot be used for any other projects;
  - (d) beneficiaries keep separate accounts for the supported non-economic activities on the one hand and the other, economic activities on the other hand;
  - (e) any items acquired when implementing the notified measure may only be used for non-economic purposes;
  - (f) the results of the projects under the notified measure will be available to the public and the granting authority will keep the right of use of the results of the project and of the copyright protected parts of project results.

## **2.9. Cumulation**

- (27) The support under the scheme cannot be cumulated with support from other measures for the same eligible costs.

## **3. ASSESSMENT**

### **3.1. Existence of aid - Application of Article 107(1) TFEU**

- (28) According to Article 107(1) of the Treaty, "[s]ave as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any

form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

- (29) The qualification of a measure as aid within the meaning of this provision therefore requires the following cumulative conditions to be met: (i) the measure must be imputable to the State and financed through State resources; (ii) it must confer an advantage on its recipient; (iii) that advantage must be selective; and (iv) the measure must distort or threaten to distort competition and affect trade between Member States.
- (30) The objectives of the notified measure are to support nature conservation and landscape maintenance (recitals (5) and (16)). This is also in line with the activities (recital (17)), and evident from the investments envisaged (recital (19)), under the scheme. The activities under the scheme are to the benefit of the general public and are not meant for commercial exploitation (recitals (24) and (25)).
- (31) The Guidelines stipulate that Articles 107, 108 and 109 of the Treaty apply to aid for basic services in rural areas, in so far as they constitute State aid within the meaning of Article 107(1) of the Treaty.<sup>4</sup> The Commission considers that public funding of a heritage conservation activity, including nature conservation, accessible to the general public free of charge can be considered as fulfilling a purely social and cultural purpose which is non-economic in nature.<sup>5</sup> It follows from recital ((25)) that under the supported projects, nature protection activities must in principle be accessible to everyone free of charge and only in exceptional cases a nominal charge is required. The fact that participants in a nature conservation activity open to the general public are required sometimes to pay a monetary contribution that only covers a fraction of the true costs does not alter the non-economic nature of that activity, as it cannot be considered genuine remuneration for the service provided.<sup>6</sup> It follows from recital (26) that, outside of the projects supported under the notified scheme, beneficiaries can carry out economic activities. In any case, public funding they receive will only cover the costs linked to the supported nature-protection activities (recital (25)). Moreover, there must be a clear division between economic and non-economic activities, so that cross-subsidisation is excluded.<sup>7</sup> It follows from recitals (25) and (26) that beneficiaries use separate accounts for supported and non-supported activities, it is ensured that costs and revenues are allocated in an appropriate way and it is excluded that public funding benefits any economic activities in which beneficiaries may engage outside of the supported projects.

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<sup>4</sup> Section 3.2, footnote no. 88 on p. 87.

<sup>5</sup> See point 34 of the Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union, OJ C 262, 19.7.2016, p. 1 ("the Notice"). In this sense also a recent Commission decision C(2016)5146 of 11 August 2016: SA.44011 (2015/N) – Germany (Thuringia) Aid for projects for development of nature and landscape.

<sup>6</sup> Point 34 of the Notice.

<sup>7</sup> Cf. points 37, 188 and 206 of the Notice.



- (32) It can therefore be concluded that, under the present scheme, the beneficiaries do not exercise an economic activity and, therefore, they are not undertakings within the meaning of Article 107(1) TFEU.<sup>8</sup>
- (33) Based on the above, it can be concluded that this scheme does not constitute State aid in the sense of Article 107(1) of the TFEU, without it being necessary to ascertain whether other conditions of application of this provision are met.

#### 4. CONCLUSION

The Commission has accordingly decided that the notified measure does not constitute State aid in the sense of Article 107(1) of the TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy in State aid decisions<sup>9</sup> and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Germany will be deemed to agree to the publication of the full text of this letter. If Germany wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(3) of Commission Regulation (EC) No 794/2004<sup>10</sup>, to the following address: [agri-state-aids-notifications@ec.europa.eu](mailto:agri-state-aids-notifications@ec.europa.eu).

For the Commission

Phil HOGAN  
Member of the Commission

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<sup>8</sup> See Judgment of the Court of Justice of 16 June 1987, *Commission v Italy*, 118/85, ECLI:EU:C:1987:283, paragraph 7; Judgment of the Court of Justice of 18 June 1998, *Commission v Italy*, C-35/96, ECLI:EU:C:1998:303, paragraph 36; Judgment of the Court of Justice of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, ECLI:EU:C:2000:428, paragraph 75.

<sup>9</sup> Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions, OJ C 297, 9.12.2003, p. 6.

<sup>10</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).